



STATE OF NEW JERSEY

In the Matter of Jonathan Arroyave,
Police Officer (S9999U), City of Orange

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

List Removal Appeal

CSC Docket No. 2018-167.

ISSUED: MAY 15, 2019 (EG)

Jonathan Arroyave appeals the decision of the City of Orange to remove his name from the eligible list for Police Officer (S9999U), City of Orange based on an unsatisfactory background report.

The subject eligible list (S9999U) was promulgated on March 30, 2017, and expires on March 29, 2020. The appellant's name appeared on the April 13, 2017 certification of the eligible list. In disposing of the certification, the appointing authority requested that the appellant's name be removed on the basis of an unsatisfactory background report. In support of its decision, the appointing authority provided to the Division of Agency Services the scoring sheets of eight individuals who had interviewed the appellant, the appellant's background report, and several pages of the appellant's application for employment. The scoring sheets indicated that seven of the interviewers found that the appellant was not suitable for a position as a police officer. The reasons given included not responsible enough, rejection from other law enforcement departments, questionable credit history, driving record, and removal from prior employment for violating company policy. Specifically, the background investigation revealed that the appellant had nine credit cards and two outstanding loans. Additionally, it showed that the appellant had been terminated from employment in 2008 and 2010 for violating company policies. In his application, the appellant stated that he was not given the reason for his 2008 termination. As to the 2010 termination, the appellant had indicated that he was terminated for violating the company policy on dating other employees. This other employee later became the appellant's wife. Further, the investigation

indicated that the appellant's driving history revealed that prior to 2012,¹ the appellant had three speeding tickets, two improper display or fictitious plates violations, two unsafe operation of motor vehicle violations, and one driving while suspended. The driving history also revealed that the appellant's driving privileges were suspended once in 2009 and once in 2010.

On appeal to the Civil Service Commission (Commission), the appellant argues that he is being discriminated against in the hiring process. Specifically, he asserts that he is being targeted because his wife ran on an opposing mayoral ticket for the position of council woman. In this regard, the appellant adds that the Director of the Orange Police Department is the brother of the Mayor.

The appointing authority, despite being provided the opportunity to respond, did not provide any arguments or evidence for the Commission to review. Additionally, the appointing authority failed to provide the appellant copies of all materials provided to the Division of Agency Services as required by *N.J.A.C.* 4A:4-4.7(b).

CONCLUSION

N.J.A.C. 4A:4-4.7(a)1, in conjunction with *N.J.A.C.* 4A:4-6.1(a)7, allows the removal of an individual from an eligible list who has a prior employment history which relates adversely to the position sought. Additionally, *N.J.A.C.* 4A:4-6.3(b), in conjunction with *N.J.A.C.* 4A:4-4.7(d), provides that the appellant has the burden of proof to show by a preponderance of the evidence that an appointing authority's decision to remove his or her name from an eligible list was in error. Further, *N.J.A.C.* 4A:4-4.7(a)1, in conjunction with *N.J.A.C.* 4A:4-6.1(a)9, allows the Commission to remove an eligible's name from an eligible list for other sufficient reasons. Removal for other sufficient reasons includes, but is not limited to, a consideration that based on a candidate's background and recognizing the nature of the position at issue, a person should not be eligible for appointment.

In the present matter, the scoring sheets provided by the appointing authority reveal that the appellant was removed from the subject eligible list for not being responsible enough, rejection from other law enforcement departments, questionable credit history, his driving record, and removal from prior employment for violating company policy. With regard to the appellant's credit history, the Commission and its predecessor, the Merit System Board, have previously held that a candidate's negative credit history, in and of itself, is not a sufficient basis upon which to remove that candidate's name from an eligible list. *See In the Matter of Alana Farrow* (MSB decided October 1, 2003); *In the Matter of Danielle Bonassisa*

¹ The background report indicated that the last entry in the appellant's driving history abstract was in 2012. Additionally, exact dates for the motor vehicle violations were not indicated in the background report. Further, the appointing authority did not provide a copy of the appellant's driving history abstract to the Division of Agency Services or to the Commission on appeal.

(MSB, decided August 12, 2003); *In the Matter of Christopher Starkey* (MSB, decided July 17, 2002). Thus, the appellant cannot be removed from the subject eligible list due to his credit history.

Similarly, the fact that the appellant was rejected for employment with other law enforcement agencies is not a sufficient basis to remove him from an eligible list. A review of official records reveals that the appellant was not removed for cause by any other law enforcement agency, and that his only removal was for failing to respond to a Notice of Certification in a timely manner.

With regard to the appellant's driving history, the Commission, in its discretion, has the authority to remove candidates from lists for law enforcement titles based on their driving records since certain motor vehicle infractions reflect a disregard for the law and are incompatible with the duties of a law enforcement officer. *See In the Matter of Pedro Rosado v. City of Newark*, Docket No. A-4129-01T1 (App. Div. June 6, 2003); *In the Matter of Yolanda Colson*, Docket No. A-5590-00T3 (App. Div. June 6, 2002); *Brendan W. Joy v. City of Bayonne Police Department*, Docket No. A-6940-96TE (App. Div. June 19, 1998). Such conduct is indicative of the exercise of poor judgment which is not conducive to the performance of the duties of a law enforcement officer. The appellant's ability to drive a vehicle in a safe manner is not the main issue in determining whether or not he should remain eligible to be a Police Officer. Rather, the issue is whether the appellant's driving record indicates an unsuitability to hold such a law enforcement position. In the instant matter, the Commission finds that it does not. The appellant's driving record reveals that his most recent suspensions occurred approximately nine years ago. Further, while the dates of driving violations are not explicitly provided, the background report indicates that the last entry in the appellant's driving history occurred in 2012. Therefore, the driving infractions occurred at least seven years ago, though they may have occurred much further back in time. Based on the foregoing, the appellant's driving record is not sufficient cause to remove his name from the eligible list.

Further, while the appellant was terminated from employment for violating company policies, these actions occurred nine years ago. Moreover, the appellant explained that he was not informed of what policy he violated in 2008, and the 2010 termination was for violating the policy on not dating other employees. The Commission is ever mindful of the high standards that are placed upon law enforcement candidates and personnel. It is recognized that a municipal Police Officer is a law enforcement employee who must enforce and promote adherence to the law. Municipal Police Officers hold highly visible and sensitive positions within the community and the standard for an applicant includes good character and an image of utmost confidence and trust. Nevertheless, in this particular matter, the Commission finds that the appointing authority has not presented a sufficient basis

to find that the appellant's prior employment history makes him an unsuitable candidate for employment as a Police Officer.

Based on this record, the appointing authority has failed to show sufficient justification for removing the appellant's name from the eligible list for Police Officer (S9999U), City of Orange. However, it is clear that the appointing authority, in its discretion under *N.J.A.C.* 4A:4-4.8, could take the appellant's background into account in deciding whether or not to bypass the appellant on the eligible list. Further, the Commission notes that the appellant did not possess a vested property interest in the position at issue. The only interest that results from placement on an eligible list is that the candidate will be considered for an applicable position so long as the eligible list remains in force. *See Nunan v. Department of Personnel*, 244 *N.J. Super.* 494 (App. Div. 1990). Moreover, given the high standards placed on law enforcement personnel, the entirety appellant's background would present sufficient cause to bypass his name for appointment from the subject eligible list. Accordingly, while the Commission finds insufficient reason to remove the appellant from the Police Officer (S9999U), City of Orange eligible list, and restores his name to the eligible list, it finds that his background provides sufficient cause to record him as bypassed on the April 13, 2017 certification.

Finally, the Commission is significantly disturbed by the City of Orange's lack of response in the current matter. *N.J.A.C.* 4A:4-4.7(b)2 provides that a request for removal of an eligible's name from an eligible list may be denied if an appointing authority fails to provide either this agency or an eligible with copies of the materials upon which it based its request for removal.² The City of Orange is advised that any future violations of *N.J.A.C.* 4A:4-4.7(b)2 could result in fines of up to \$10,000. *See N.J.S.A.* 11A:10-3. *See also N.J.A.C.* 4A:10-2.1.

ORDER

Therefore, it is ordered that this appeal be granted and his name be restored to the subject eligible list but that the appellant's name be recorded as bypassed for appointment on the list for Police Officer (S9999U), City of Orange.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

² The Commission notes that it is clear that *N.J.A.C.* 4A:4-4.7(b)2 does not require this agency to automatically deny a request for removal if an appointing authority fails to provide the required material to the candidate or this agency.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 9TH DAY OF MAY, 2019

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